

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 65 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

ABDUL MUNAF GULAMBHAI

CHAUHAN

Versus

STATE OF GUJARAT

Appearance:

MR AA CHANDIWALA for Petitioner

PUBLIC PROSECUTOR for Respondent No. 1

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 02/03/98

ORAL JUDGEMENT

1. Being aggrieved and dissatisfied by the order, dated 4.2.98 passed by the Ld.Addl.Sessions Judge and Special Judge, Surat in the proceedings of Special Case No.21/95 the petitioner has preferred the present revision application.

2. That vide impugned order the Ld.Special Judge has

rejected the applications-Exhs.24 & 25 dated 18.12.1997 moved by the present petitioner as accused of Special Case No.21/95 to examine the defence witnesses.

3. It may be noted that the present petitioner is charged for committing offences made punishable under sections 7 & 13(i), (ii), (iii) read with Section 13(2 of Prevention of Corruption Act, 1988. That during the trial the prosecutor has dropped certain prosecution witnesses and had declared the evidence of prosecution closed by filing pursis. The petitioner through his advocate moved an application-Exh.23 dated 8.10.97 requesting the court to examine the witnesses dropped by the prosecution as a court witness under the provisions of Section 311 of Cr.P.C. and that vide order dated 22.10.97 passed below Exh.23 the Ld.Spl.Judge rejected the application of the petitioner holding that such an application as a request to examine the defence witnesses is premature at that stage and it is not required to be granted. That thereafter statement of present petitioner as accused was recorded under section 313 of Cr.P.C. wherein the accused has stated before the Court that he desires to examine the witness as in his defence and thereafter has submitted list of defence witnesses as per copy produced on page 16. That the Ld.advocate appearing on behalf of the present petitioner as accused in the Special Case No.21/95 has moved an application-Exh.25 dated 18.12.1997 requesting the court to summon the witnesses as per list-Exh.24. The petitioner as accused has also filed list of documents, dated 18.12.1997 as per page 18.

4. The Ld.judge decided the said application-Exh.25 dated 18.12.1997 of the present petitioner vide impugned order and rejected the same.

5. The Ld.APP-Ms.B.R.Gajjar had taken me through the impugned order and has submitted that the petitioner had requested the court to examine the witnesses earlier cited by the prosecution, but dropped during the trial; as the court witnesses under section 311 of Cr.P.C. That on rejection of said application the accused-petitioner has moved application-Exh.25 along with long list of six witnesses who have no concern with the subject matter of charge and the trial. That the court has construed the said act of the petitioner as an intention to protract the proceedings and under such circumstances the said application appears to have been rejected.

6. On perusal of the impugned order which is

produced on record vide annexure -A at running pages 19-21 it appears that the Ld.Spl.Judge has committed error of law by rejecting the application on the ground that the petitioner/applicant has failed to state in the application that which witness is required to be examined on what point. Under the circumstances, the witnesses proposed to be examined by the petitioner as accused of Special Case No.21/95 can not be said to be just and proper. Said witnesses are not likely to assist the accused as neutral witnesses in establishing the defence. Hence, the application is rejected.

7. That the petitioner as accused of Special Case No.21/95 has a right to examine the witnesses in his defence subject to provisions of law. That the court can regulate the recording of evidence by applying provisions of law and refuse the permission to ask irrelevant questions not material or germane to the fact in issue. However, the court can not pre-judge such a claim of the accused merely on perusal of application and the names of witnesses to come to conclusion that such witnesses can not be said to be neutral witnesses and are not likely to assist the petitioner in establishing the defence. Rejection of such application to examine the defence witnesses amounts to depriving the accused an opportunity of exercising his substantive right and as such I hold that the order passed by the Ld.Spl.Judge, dated 4.2.98 below Exhs 24 & 25 in the matter of Special Case No.21/95 is required to be set aside and quashed.

8. On the basis of above stated discussion the present revision application succeeds. The impugned order dated 4.2.98 passed below Exhs.24 & 25 of Special Case No.21/95 is hereby set aside and quashed. Application-Exh. 25 moved by the petitioner as accused in Special Case No.21/95 is granted. The Ld.Spl.Judge is directed to issue necessary summons for the defence witness as prayed vide Exh.24, dated 18.12.1997 and permit the petitioner to examine the said witnesses. However, as permissible in accordance with law. Rule to that extent is made absolute. No order as to costs. Interim relief granted earlier shall stand extended till 5.3.98. DS permitted.

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